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**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

HALL, MAHAR & ASSOCIATES INSURANCE SERVICES, INC.,

Plaintiff and Respondent,

v.

SANBORN & CHURTON INSURANCE SERVICES, INC., et al.,

Defendants and Appellants.

G051572

(Super. Ct. No. 30-2013-00664503)

O P I N I O N

Appeal from a judgment and a postjudgment order of the Superior Court of Orange County, Mary Fingal Schulte, Judge. The judgment is affirmed. The postjudgment order is reversed.

John L. Dodd & Associates, John L. Dodd and Benjamin Ekenes for Defendants and Appellants.

Michelman & Robinson, Jeffrey D. Farrow and Robin James for Plaintiff and Respondent.

* * *

## INTRODUCTION

Following a bench trial, the trial court found defendant Sanborn & Churton Insurance Services, Inc. (Sanborn), liable to plaintiff Hall, Mahar & Associates Insurance Services, Inc. (Hall), for misappropriation of trade secrets, and entered judgment accordingly. The trial court thereafter granted Hall's ex parte application seeking an order, under Code of Civil Procedure section 187, to amend the judgment to add Churton Insurance Services, Inc., as a judgment debtor. (All further references are to the Code of Civil Procedure unless otherwise specified.) Sanborn and Churton Insurance Services, Inc., argue insufficient evidence supported the finding that Sanborn misappropriated any of Hall's trade secrets. They further argue the court awarded excessive damages in favor of Hall. They also challenge the court's postjudgment order amending the judgment to add Churton Insurance Services, Inc., as a defendant against whom judgment has been entered.

We affirm the judgment against Sanborn. We reverse the order granting Hall's ex parte application seeking an order amending the judgment to add Churton Insurance Services, Inc., as a judgment debtor, under section 187. Section 187 requires a noticed motion. Hall did not file a noticed motion and failed to show it would suffer irreparable harm if it did so. Therefore, we reverse the order granting Hall's ex parte application and amending the judgment to include Churton Insurance Services, Inc., as a judgment debtor, without prejudice to Hall to file a noticed motion.

## FACTS

Hall is an insurance agency appointed by large insurance companies to sell their insurance policies to consumers in California. Mercury Insurance (Mercury) has been Hall's "largest carrier."

Hall employed David Stewart as an insurance "salesman producer" from 1991 until December 2012, during which time Stewart was licensed by the State of California to sell and did sell "Property & Casualty and Life Insurance." When Stewart was hired, he was told that "whatever information he had access to as an employee of the agency can be used only for agency business." Stewart testified that during his tenure at Hall, it was his understanding Hall required its employees not use client information, including contact information and financial information, "for some purpose other than agency business," and his understanding as to that requirement never changed.

In December 2012, Stewart had discussions with Tim Churton about going to work for Sanborn, which did business as "Tustin Insurance Agency." Churton was the owner of Tustin Insurance Agency. They agreed that if Stewart worked for Tustin Insurance Agency, when "a client from Hall, Mahar & Associates Insurance Services, Inc. became a client of Tustin Insurance[,] whatever commission was earned on that business [Stewart] would get 50 percent and 50 percent would stay with Tustin."

On December 20, 2012, Stewart informed Hall that he would be leaving the agency. On that same date, Farrel Mahar, who was at that time a corporate officer and 50 percent owner of Hall, told Stewart, "he wasn't to take any information of the agency out of the agency, that the information was to be used for [Hall's] business purposes only." Mahar also left a voice mail message for Churton informing him that Stewart could not take business with him to Tustin Insurance Agency.

As stipulated to by the parties before trial, when Stewart left Hall, he took with him copies of "many, if not all, insurance applications for customers of [Hall] and/or its predecessors from 1991 to 2012," and for every application that he took, he had created a "handwritten list" for that client. The parties further stipulated: "The information on those insurance applications was not generally publically known to competitors of [Hall] who could use it for economic gain." Stewart testified that he did not tell anyone at Hall that he had taken copies of the applications because it "wasn't

necessary." He further testified that each application contained the insured's name and contact information, the types of policies the insured had, and premium information.

Stewart began working for Tustin Insurance Agency on January 3, 2013. Tustin Insurance Agency provided Stewart with office space, a computer, an e-mail address, a printer, stationery, a customer service representative, telephones, letterhead, postage, and a copy machine to help him contact Hall's clients and move them to Tustin Insurance Agency. Stewart telephoned "some persons whose insurance applications he took copies of from 1991-2012." During those telephone calls, he told the Hall clients that he (1) had joined Tustin Insurance Agency; (2) would like to continue to serve their insurance needs; and (3) would like to continue to serve their insurance needs when their policies came up for renewal.

On January 15, 2013, Stewart and Churton received and reviewed a cease and desist letter from Hall. Stewart and Churton discussed the letter and decided to ignore it. Stewart did not think it was a "big deal." Stewart testified that he had destroyed client and e-mail lists after he had received the cease and desist letter.

Before trial, the parties stipulated that after Stewart joined Tustin Insurance Agency, at least 180 clients and at least 327 polices were transferred for renewal from Hall to Tustin Insurance Agency. The parties further stipulated that the annual commissions that would have been earned by Hall on those clients and/or policies were $76,779.07.

Hall called two expert witnesses at trial; the defense did not call expert witnesses. Paul Pollen, who had 50 years' experience in the insurance industry, testified that the client information Stewart took with him when he left Hall constituted trade secret information. Pollen testified that it is the general practice to make sure employees know such information is trade secret information. He testified that Hall had a renewal rate of 92 or 93 percent.

Certified public accountant David Hanson testified, inter alia, that the book of business Hall lost to Tustin Insurance Agency had an average life of 13 years following renewal.

## PROCEDURAL BACKGROUND

### I.

### HALL SUES STEWART AND SANBORN FOR MISAPPROPRIATION OF TRADE SECRETS; AFTER A BENCH TRIAL, THE COURT FINDS IN FAVOR OF HALL AND ISSUES A STATEMENT OF DECISION; JUDGMENT IS ENTERED.

Hall filed a complaint against Stewart and Sanborn, which contained a claim for misappropriation of trade secrets in violation of the Uniform Trade Secrets Act codified at Civil Code section 3426 et seq. (UTSA), sought the remedy of a constructive trust, and sought an accounting with a concomitant request for the appointment of a referee.

Following a bench trial, the court's final statement of decision stated in part: "The Court finds that Plaintiff has established all the elements of its claim for violation of the UTSA, and the Court awards compensatory damages of $552,534. The allocation of that damage award shall be split evenly between the two defendants: David Stewart is liable for $276,267 and [Sanborn] is liable for $276,267." The court's final statement of decision further stated: "The Court finds the plaintiff has not met its burden of proof to support an additional award of punitive damages or treble damages. The Court denies the request for a referee. Although Plaintiff requested an injunction such as an order for Defendants to turn over information, purge from system, prohibit from using information, such an injunction will be very hard to monitor without unduly involving the Court. Additionally, monetary damages are requested and appear to be adequate. Generally an injunction is not given where money damages will make a party whole."

Judgment was entered in favor of Hall and against Stewart and Sanborn in the total amount of $552,534; each were liable for half of the total amount of damages.

The judgment provided Hall was entitled to recover its attorney fees and costs pursuant to Civil Code section 3426.4.[1]

II.

SANBORN FILES A MOTION FOR A NEW TRIAL, WHICH IS DENIED BY THE TRIAL COURT.

Sanborn moved for a new trial, in which it challenged the court's statement of decision and argued insufficient evidence supported the judgment because, inter alia, Stewart only contacted former clients known to him and, at most, the evidence showed Stewart only misappropriated information regarding 22 clients. Sanborn also argued insufficient evidence showed that it was liable for misappropriating trade secrets and that the court awarded excessive damages.

The trial court denied the motion, stating:

"Is the Judgment as to Liability Supported by Substantial Evidence? Yes.

"As set forth in more detail in the Court's Statement of Decision, co-defendant Stewart's use of confidential information in soliciting business from his prior employer makes what otherwise would have been lawful competition, tortious conduct. A violation of the UTSA occurs when an individual misappropriates a former employer's protected trade secret client list, for example, by using the list to solicit clients. [Citation.] Further, the evidence supports a claim for, among other things, interference with prospective economic advantage. [Citation.] 'A legal theory to sustain a judgment may be considered on appeal even though it was not raised in the trial court, as long as it does not raise factual issues not presented to the trial court.' [Citation.]

[1] In its respondent's brief, Hall argues the trial court erred in failing to find that Sanborn willfully and maliciously misappropriated Hall's trade secrets within the meaning of Civil Code section 3426.4 to allow Hall to recover attorney fees from Sanborn. Hall did not file an appeal in this case, and, thus, the issue raised in Hall's respondent's brief is not properly before the court. We therefore do not address it further.

"Defendant Sanborn contends that most of the individuals Stewart contacted and procured policies for were his friends and contacts he had made over many years as an insurance agent, and that he had the legal right to contact and solicit those contacts after he left his employment with Plaintiff. If that were the only fact, that would certainly be true. However, Mr. Stewart *admittedly* took without permission when he left insurance applications that contained information, including the name[,] address, phone number, type of policy and insurance requirements of clients that was 'not generally publically known to competitors of [plaintiff] who could use it for economic gain,' used this information to target and solicit customers, and that at least 180 customers 'transferred' their business from Plaintiff to Defendant at the time of the renewal of their policies. . . . According to Stewart's own trial testimony, the applications contained information he needed to contact customers to see if they were interested in moving their business, and he did use the information to do that. . . . Stewart also took the email addresses of Plaintiff's customers when he left. . . . Then, after receiving a cease and desist letter from Plaintiff, Stewart deleted all of his email evidencing the solicitations, as well as the list he created of customers he would target compiled from the information on their insurance applications. . . .

"As to the liability of Sanborn for Stewart's conduct, there is substantial evidence to support direct liability against Sanborn. Stewart testified Sanborn expected him to bring over business from Plaintiff, and provided Stewart resources to help him move his business from Plaintiff over to Sanborn . . . , and split commissions for that business with Stewart 50/50. Churton testified that he asked Stewart during a recruitment meeting[] (while Stewart was still employed by Plaintiff) if he could move his business, and Stewart said he could.

"Is the Damage Award Supported by Substantial Evidence? Yes.

"Are the Damages Excessive? No.

"The amount of damages awarded is supported by the testimony of economist David Hanson and insurance expert Paul P[olle]n, and Defendants chose not to call any expert or other witnesses to refute the testimony, or assumptions and facts underlying the opinions, or offer their own measure and calculation of damages. They stipulated to many of the facts that supported the testimony on damages."

## III.

### HALL FILES AN EX PARTE APPLICATION SEEKING AN ORDER AMENDING THE JUDGMENT TO INCLUDE CHURTON INSURANCE AGENCY, INC., AS A JUDGMENT DEBTOR; THE TRIAL COURT GRANTS THE APPLICATION AND AMENDS THE JUDGMENT ACCORDINGLY; SANBORN AND CHURTON INSURANCE SERVICES, INC., APPEAL.

In February 2015, Hall filed an ex parte application to amend the judgment "to add the name 'Churton Insurance Services, Inc.' as a defendant against who[m] judgment has been entered. In the alternative, [Hall] requests the Court set an Order to Show Cause why 'Churton Insurance Services, Inc.' . . . should not be added to the judgment." The application stated ex parte relief was warranted because after trial, but before entry of judgment, Sanborn changed its name to "Churton Insurance" and "told the insurance companies with whom it does business to begin paying all commissions to 'Churton Insurance.'" The application asserted that Sanborn was intentionally and illegally attempting to redirect its commissions to Churton Insurance to avoid its obligations to pay the judgment.

The trial court granted Hall's ex parte application to amend the judgment to insert the name "Churton Insurance Services, Inc.," as a judgment debtor. The amended judgment was entered in favor of Hall and against Stewart, in the amount of $276,267, and Sanborn, "also known as Churton Insurance Services, Inc. dba Tustin Insurance Agency" (some capitalization omitted), in the amount of $276,267.

Sanborn and "Churton Insurance Services, Inc. dba Tustin Ins. Agency" filed a notice of appeal.[2]

## DISCUSSION

### I.

### SUBSTANTIAL EVIDENCE SUPPORTED THE COURT'S FINDINGS.

We review the trial court's express factual findings in the statement of decision, and any implied findings, for substantial evidence. (*Apex LLC v. Sharing World, Inc.* (2012) 206 Cal.App.4th 999, 1009.) "We review legal issues . . . under a de novo or independent standard." (*Ibid*.)

### A.

#### *Substantial Evidence Supported the Court's Finding That the Customer Information Stewart Took When He Left Hall Constituted Trade Secrets as Defined by Civil Code Section 3426.1, Subdivision (d).*

Sanborn and Churton Insurance Services, Inc., contend the judgment is supported by insufficient evidence because a customer list for a generic insurance business cannot amount to trade secrets. They argue Stewart only contacted former clients known to him, and Hall took insufficient steps to keep the customer list confidential. Sanborn and Churton Insurance Services, Inc.'s arguments are without merit.

Civil Code section 3426.1, subdivision (d) provides that "'[t]rade secret' means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: [¶] (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can

[2] Stewart filed his own notice of appeal; Stewart's appeal was consolidated with this appeal but later ordered severed from the instant appeal and dismissed upon Stewart's request.

obtain economic value from its disclosure or use; and [¶] (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy."

Substantial evidence showed the applications Stewart took when he left Hall constituted a compilation of information not generally known to the public. That information was contained on client applications and included insureds' names and contact information, their types of policies, and premium information. The parties stipulated that "[t]he information on those insurance applications was not generally publically known to competitors of [Hall] who could use it for economic gain." It was further stipulated that Stewart used the information to contact Hall's customers to have their policies transferred to Tustin Insurance Agency for renewal and thereby caused Hall to lose commissions in the amount of $76,779.07 annually, which it would have otherwise earned. Under those circumstances, that Stewart had developed personal relationships with some of Hall's clients does not, in and of itself, insulate him from liability for misappropriating Hall's trade secret client information.

Sufficient evidence also showed Hall made reasonable efforts, under the circumstances, to maintain the secrecy of its customer information. Stewart testified that during his employment with Hall, he knew that the agency's policy provided that client information he had access to could be used only for agency business. Stewart stated that during his tenure at Hall, it was his understanding Hall required its employees not use client information such as contact information, telephone numbers, and financial information for any purpose other than for agency business. He further stated his understanding as to that requirement never changed.

When Stewart left Hall in December 2012, he was told he was not to take any of the agency's information with him and that the information was to be used only for Hall's business purposes. In addition, Hall had a confidentiality policy in its agency manual (although the agency was unable to produce evidence that Stewart had signed a copy of it), which provided in part: "[A]ll matters pertaining to agency procedures,

customer data (including expiration lists), and financial information about the agency or its clients are not to be divulged or discussed outside the office." Trial evidence also showed that Hall uses login codes and passwords to protect its customer information, allows insurance producers/salespersons limited access to customer information, and prohibits its employees from taking files out of the office without prior permission from a corporate officer.

Thus, substantial evidence showed the customer information that Stewart took with him after he left Hall constituted trade secrets within the meaning of the UTSA.

B.

*Substantial Evidence Supported the Judgment Against Sanborn for Misappropriation of Hall's Trade Secrets.*

Sanborn and Churton Insurance Services, Inc., argue that even if sufficient evidence supported a judgment against Stewart for misappropriation of trade secrets, insufficient evidence supported finding Sanborn liable for misappropriating trade secrets as well. Civil Code section 3426.1, subdivision (b) defines the term, "'[m]isappropriation,'" as "(1) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or (2) Disclosure or use of a trade secret of another without express or implied consent by a person who: [¶] (A) Used improper means to acquire knowledge of the trade secret; *or* [¶] (B) At the time of disclosure or use, knew or had reason to know that his or her knowledge of the trade secret was: [¶] (i) Derived from or through a person who had utilized improper means to acquire it; [¶] (ii) Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or [¶] (iii) Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or [¶] (C) Before a material change of his or her position, knew or had reason to know that it

was a trade secret and that knowledge of it had been acquired by accident or mistake." (Italics added.)

Substantial evidence supported the finding that Sanborn recruited Stewart away from Hall in order to utilize trade secret information to which Stewart had access and Sanborn could thereafter use to lure Hall's clients away from Hall and to Tustin Insurance Agency. Before Stewart left Hall, Stewart and Churton discussed splitting commissions received on any business Stewart was able to transfer from Hall to Tustin Insurance Agency. Stewart testified it was his understanding that Sanborn expected him to bring over some business and that Sanborn would provide certain assets, such as office space and equipment, "in order to help [him] move business from Hall . . . to Tustin."

Stewart told Churton that he could bring his business with him, but Mahar informed Churton that Stewart was not permitted to take business with him. After leaving Hall, Stewart used Hall's customer information to solicit Hall's customers on behalf of Tustin Insurance Agency. Tustin Insurance Agency never provided Stewart with any leads. After Hall sent a cease and desist letter to Stewart and Sanborn, Stewart and Churton discussed the letter and Churton advised Stewart to "blow it off." Steward did not respond to the letter. Stewart thereafter destroyed lists containing information based on documents he had taken from Hall.

Sufficient evidence therefore supported the trial court's finding that Sanborn should be held liable to Hall for misappropriation of Hall's trade secrets.

C.

*Substantial Evidence Supported the Damages Award.*

Sanborn and Churton Insurance Services, Inc., argue the damages award of $552,534, one-half of which was awarded against Sanborn, was excessive as a matter of law. We disagree.

The trial court did not award Hall either punitive or treble damages. The trial court's compensatory damages award was supported by evidence of a number of factors. First, it was based on the parties' stipulated fact that Hall would have earned $76,779.07[3] in annual commissions for clients/policies that transferred from Hall to Tustin Insurance Agency. It was further stipulated that at least 180 of Hall's clients (at least 327 insurance policies) transferred from Hall to Tustin Insurance Agency at the time of the renewal of their policies. Evidence was also before the court that Hall had a renewal rate of 92 or 93 percent. Hanson testified that given Hall's renewal rate and the 13.3 years' average length of time its clients had been with Hall, Hall's lost book of business had an average life of 13 years on renewal.

Sanborn and Churton Insurance Services, Inc., failed to show the trial court awarded excessive damages.

## II.

## HALL SHOULD HAVE SOUGHT TO AMEND THE JUDGMENT TO ADD CHURTON INSURANCE SERVICES, INC., AS A JUDGMENT DEBTOR, BY WAY OF A NOTICED MOTION.

Sanborn and Churton Insurance Services, Inc., contend the trial court erred by granting Hall's ex parte application to amend the judgment to name Churton Insurance Services, Inc., as a judgment debtor, pursuant to section 187. We agree.

Section 187 provides: "When jurisdiction is, by the Constitution or this Code, or by any other statute, conferred on a Court or judicial officer, all the means necessary to carry it into effect are also given; and in the exercise of this jurisdiction, if the course of proceeding be not specifically pointed out by this Code or the statute, any

[3] Mahar testified that in calculating damages, Hall used the reduced amount of $75,067 for annual commissions to take into account the commissions earned from Stewart's family and associates.

suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this Code."

"Section 187 grants every court the power and authority to carry its jurisdiction into effect. [Citation.] This includes the authority to amend a judgment to add an alter ego of an original judgment debtor, and thereby make the additional judgment debtor liable on the judgment. [Citation.] Amending a judgment to add an alter ego of an original judgment debtor '"is an equitable procedure based on the theory that the court is not amending the judgment to add a new defendant but is merely inserting the correct name of the real defendant."' [Citation.]" (*Highland Springs Conference & Training Center v. City of Banning* (2016) 244 Cal.App.4th 267, 280, fn. omitted.)

"To prevail on the motion, the judgment creditor must show, by a preponderance of the evidence, that '(1) the parties to be added as judgment debtors had control of the underlying litigation and were virtually represented in that proceeding; (2) there is such a unity of interest and ownership that the separate personalities of the entity and the owners no longer exist; and (3) an inequitable result will follow if the acts are treated as those of the entity alone.' [Citation.] The decision to grant or deny the motion lies within the sound discretion of the trial court [citation] and will not be disturbed on appeal if there is a legal basis for the decision and substantial evidence supports it. [Citation.]" (*Highland Springs Conference & Training Center v. City of Banning, supra*, 244 Cal.App.4th at p. 280.)

Appellate courts have held that "[s]ection 187 contemplates amending a judgment by noticed motion. [Citations.] The court is not required to hold an evidentiary hearing on a motion to amend a judgment, but may rule on the motion based solely on declarations and other written evidence. [Citation.]" (*Highland Springs Conference & Training Center v. City of Banning, supra,* 244 Cal.App.4th at p. 280; see *Wells Fargo Bank, N.A. v. Weinberg* (2014) 227 Cal.App.4th 1, 9 [section 187 contemplates a noticed

motion]; § 1005, subd. (a)(13) [written notice shall be given for "[a]ny other proceeding under this code in which notice is required and no other time or method is prescribed by law or by court or judge"].)

Here, Hall did not file a noticed motion to amend the judgment under section 187, but appeared ex parte to seek such an amendment. Consequently, Sanborn and Churton Insurance Services, Inc., did not have the opportunity to prepare an opposition or present evidence to the trial court in support of their argument that Churton Insurance Services, Inc., could not be properly added to the judgment as a judgment debtor based on the standards set forth *ante*. Sanborn's counsel requested that the hearing on Hall's application be continued to the following week to allow Sanborn the opportunity to submit a written opposition. The trial court did not continue the matter and granted the application.

Hall argues, "[e]x parte relief was appropriate because [Hall] faced irreparable harm and immediate danger." (Boldface & underscoring omitted.) Hall asserted that after it served a writ of execution on Mercury to levy commissions that Mercury was to pay to Sanborn, Mercury's counsel informed Hall that Sanborn's fictitious business name, Tustin Insurance Agency, was being used by Churton Insurance Services, Inc. Hall further asserted Scott Churton, the vice-president of Tustin Insurance Agency, directed Mercury to deposit commissions due to Tustin Insurance Agency into Churton Insurance Services, Inc.'s bank account. Consequently, Hall argues, when Hall served the writ of execution, Mercury refused to pay Hall. Mercury's counsel explained that the name and tax identification number for the recipient of the commissions had been changed to Churton Insurance Services, Inc., which did not match the name of the judgment debtor on the writ (Sanborn).

In support of its ex parte application, Hall submitted the declaration of its attorney, Jeffrey D. Farrow, which stated in part: "[Mercury's counsel] advised [Farrow] that on March 5, 2015, Mercury Insurance is scheduled to send commission payments to

'Churton Insurance' rather than Sanborn . . . , and is required to do so unless an amended judgment is issued naming 'Churton Insurance'. Unless this Court acts promptly, more than $100,000 in commissions that would otherwise be paid to [Hall] under the Writ of Execution and levying instruction issued to Mercury Insurance will be paid instead to 'Churton Insurance' which will be for the benefit of Defendant Sanborn . . . , and all to the irreparable harm and prejudice of [Hall]." This evidence is insufficient to excuse Hall from filing a noticed motion.

Our record shows Sanborn received very short notice of Hall's effort to amend the judgment. As set forth in the parties' agreed statement, Hall gave notice of its ex parte application "prior to 10:00 a.m." on February 26, 2015, and at 10:23 a.m. on February 27, Sanborn's counsel received a copy of the ex parte application—just about three hours before Hall's counsel appeared ex parte that same day. At the hearing, Sanborn's counsel asked for only one week to respond, but that request was denied. Sanborn's request for a brief period of time to prepare an opposition to Hall's application illustrates the problem in this case of it receiving insufficient notice.

Significantly, Hall's application did not address why Hall could not proceed by way of noticed motion and provide Sanborn the opportunity to submit written opposition to the court. Although the declaration refers to a total of $100,000, the application did not contain evidence showing the amount of monthly commissions paid by Mercury, which was subject to levy, and did not otherwise quantify the amount of commissions that would likely be paid by Mercury to Churton Insurance Services, Inc., before a noticed motion would be heard.

Although it appears also true the requirements for adding a judgment debtor, as set forth *ante*, were arguably not met in Hall's ex parte application, we do not decide that issue. The limited information provided, regarding the timing and amount of the monthly commissions paid by Mercury, was not substantial enough to warrant

avoiding the requirement of a noticed motion.[4] We therefore reverse the postjudgment order granting Hall's ex parte application without prejudice for Hall to file a noticed motion.

## DISPOSITION

The judgment is affirmed. The order granting the ex parte application seeking to amend the judgment to add Churton Insurance Services, Inc., as a judgment debtor, is reversed. In the interests of justice, no party shall recover costs.

FYBEL, J.

WE CONCUR:

O'LEARY, P. J.

THOMPSON, J.

[4] Hall could have tried to reduce the amount of time that would pass before hearing on a noticed motion by applying ex parte for an order shortening time on the hearing on such a motion.